

INTERSTATE COMMERCE COMMISSION RAILROAD ABANDONMENT PROCEDURES

To aid in understanding the railroad abandonment process, the Missouri Department of Transportation, Division of Railroads, has developed this fact sheet to give you a precise overview of the steps involved. The Interstate Commerce Commission (ICC) has exclusive jurisdiction in railroad abandonment cases.

Step 1: Advance Notice

A) System Diagram Map

Each railroad must file with the ICC, the Governor, the Missouri Department of Transportation, and associated newspapers, a system diagram map depicting all lines of railroads it operates. The system diagram map must show five color-coded categories of line as follows:

Category 1 -- all lines which the carrier will seek to abandon within three years (color-coded red).

Category 2 -- all lines under study by the carrier which may be subject to future abandonment attempts (color-coded green).

Category 3 -- all lines for which an abandonment application is pending before the ICC (color-coded yellow).

Category 4 -- all lines that are being operated under the rail service continuation provisions in the 3-R Act (color-coded brown). This does not apply to Missouri.

Category 5 -- all other lines the carrier owns or operates (color-coded black or blue).

After the railroad publishes the system diagram map, the line must be listed as "Category 1" for a minimum of 120 days prior to filing of an abandonment application.

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B) Notice of Intent

Carriers must file a "Notice of Intent" to abandon a line within 30 days prior to the actual filing of the abandonment application. The "Notice of Intent" must be served on the ICC, governor, MoDOT, associated newspapers, and shippers.

Step 2: Comments or Petitions to Investigate

The first 60 days after the application is filed:

- (A) Within 35 days of the filing of the application, interested persons may file either
 - (1) Comments, which may be informal, need not be served on the railroad.
 - (2) Petitions to Investigate, which must be verified and served on the railroad.
- (B) If a petition to investigate is filed, the ICC must institute an investigation. (The ICC may institute their own investigation whether or not comments or petitions are received.)
- (C) If the ICC institutes an investigation, it must notify the railroad by the 55th day following the filing of the application.
- (D) If no investigation is instituted, the certificate of abandonment must be issued on the 60th day following the filing of the application. The certificate will be conditioned as not final until interested persons have had an opportunity to offer financial assistance to assure continued service over the line.

Step 3: Investigation

- (A) The ICC evidentiary hearing proceedings must be completed within 180 days.

- (B) The ICC initial decision is required within 120 days after completion of evidentiary proceedings.
- (C) Appeals from the initial decision must be filed within a 20-day period, which can be extended by the ICC for an additional 20 days only.
- (D) A decision on appeal must be issued within 180 days after the appeal is filed.
- (E) Appeal from this decision can be made. The appeal must be filed within a 20-day period, which can be extended for an additional 20 days only.
- (F) A decision on a second appeal must be issued within 120 days after the appeal is filed.

Step 4: Final Decision

When a proceeding is administratively final, the ICC issues a "Certificate and Order". This finding will be published in the Federal Register.

- (A) The final order will be issued 90 days after an application is received if no investigation and no offers of financial assistance are received.
- (B) The final order may be delayed up to 180 days if offers of financial assistance are received.
- (C) Financial Assistance Procedures
 - (1) An offer of financial assistance must be filed and served with the ICC and all parties within 15 days of the date of publication in the Federal Register.

- (2) Offers of financial assistance may be in the form of operating subsidy or purchase of the line.
- (3) Within 30 days of its publication in the Federal Register, the ICC must either find that a financially responsible person has made an adequate offer of financial assistance, or allow the abandonment to take place.
- (4) If a valid offer of financial assistance has been made the ICC will postpone issuance of a final certificate of abandonment for up to 6 months to enable the carrier and offeror to negotiate an agreement.
- (5) Within 30 days of its publication in the Federal Register the ICC finds that no financially responsible assistance offers have been filed, the ICC will issue a final certificate authorizing abandonment of the line.
- (6) If after the six month financial assistance negotiating period, the parties are unable to execute an agreement, the ICC may:
 - (a) issue a final certificate authorizing abandonment.
 - (b) reopen the abandonment proceeding.
 - (c) direct the carrier to continue service for one year in return for ICC computed compensation.
 - (d) take whatever action is appropriate including setting the matter for arbitration.

Format for Protesting Abandonments

Petition to Investigate:

A petition to investigate shall be in the form of a verified statement, and at minimum, contain:

- (A) identification of petitioner including its name, address, and business.
- (B) statement of petitioner's interest in the abandonment or discontinuance proceeding; whether petitioner uses the involved service; and if it does not, information with respect to the group or public interest it represents.
- (C) specific reason(s) for requesting the institution of an investigation, including information with respect to petitioner's reliance on the involved service, with allegations of fact supported by an affidavit of personal knowledge of the facts.
- (D) any rebuttal of information or material submitted by the applicant.
- (E) request for oral hearing and reasons therefore, if desired.

-- A filing of a petition to investigate will constitute the ICC to institute a formal investigation.

-- A petition to investigate would be appropriate for those strongly opposing an abandonment and having a direct interest in maintaining the rail service involved.

Written Comments:

Written comments shall, at a minimum, contain:

- (A) exact name and address of commenting party.
- (B) brief statement of interest in the abandonment or discontinuance proceeding.

- (C) recommendations to the ICC with regard to approval, disapproval, or other specified action on the abandonment or discontinuance application.
- (D) specific statement of position and summary of evidence with regard to any or all of the following:
 - (1) intent to offer financial assistance
 - (2) environmental impact
 - (3) impact on rural and community development
 - (4) suitability of the properties for other public purposes
 - (5) recommended provisions for protection of the interests of employees.

-- A filing of written comments does not guarantee an ICC investigation of a proposed abandonment.

-- The filing of comments would be appropriate for those supporting an abandonment or wishing to call attention to some particular circumstance connected with the abandonment, such as the suitability of the property involved for recreational or other public use.

Filing and Service Requirements:

- (A) An original and two copies of each petition to investigate and each written comment must be filed with the ICC within 35 days after the carrier files its abandonment application with the ICC. The proposed date of filing of an abandonment or discontinuance application is included in the "Notice of Intent" required to be circulated by the carrier.

- (B) A copy of each petition to investigate and each written comment must also be served on the applicant railroad's representative whose name and address will be included in the "Notice of Intent", at the time of filing with the ICC. Each petition or comment must also contain a certificate of service naming the parties served with the document.
- (C) Replies to written comments and petitions to investigate may be filed. Replies to petitions for investigation shall be in the form of verified statement. Replies must be served on all commenting and petitioning parties. An original and two copies of such replies must be filed no later than 45 days from the date the carrier's application is filed with the ICC.

Correspondence concerning rail abandonments should be addressed to:

Interstate Commerce Commission
Secretary
Washington, D. C. 20423

Copies should be sent to:

Division of Railroads
Missouri Department of Transportation
Broadway State Office Building
P.O. Box 1250
Jefferson City, Mo. 65101
Phone #: 314-751-2423

Copies should also be submitted to the railroad companies and known affected shippers.

INTERSTATE COMMERCE COMMISSION RAILROAD ABANDONMENT TIMETABLE

Step 1: Advance Notice

<u>Time Frame</u>		<u>Total Time</u>
Day 1	System Diagram Map	0 Days
After 90 Days	Notice of Intent	90 Days
After 30 Days	Abandonment Application	120 Days

Step 2: Comments or Petitions to Investigate

Day 1	Abandonment Application	0 Days
Within 35 Days	Comments or Petitions to Investigate	35 Days
Within 15 Days	Replies to Comments or Petitions	45 Days
Within 10 Days	Order to Investigate	55 Days
Within 5 Days	Conditional Certificate (If no Investigation)	60 Days
Within 30 Days	Final Certificate (If no appeal)	90 Days

Step 3: Investigation

Day 1	Order to Investigate	0 Days
Within 180 Days	Evidentiary Hearing Proceedings	180 Days
Within 120 Days	ICC Initial Decision Abandonment Denied or Granted	300 Days
Within 20 Days	Make Appeal or Request Extension	320 Days
Within 20 Days	Appeal Deadline if Extension Granted	340 Days
Within 180 Days	Decision on Appeal	520 Days
Within 20 Days	Make Second Appeal or Request Extension	540 Days
Within 20 Days	Appeal Deadline if Extension Granted	560 Days
Within 120 Days	Decision on Second Appeal	680 Days

-----If Abandonment Denied-Rail Service Continues-Case Closed

-----If Abandonment Granted-Conditional Certificate Issued

Step 4: Final Decision

Day 1	Conditional Certificate	0 Days
Unknown	Published in Federal Register	Unknown
(Depends on printing)		(Depends on printing)
Within 15 Days	Offers of Financial Assistance	15 Days
Within 15 Days	Final Certificate (If no offers)	30 Days
Within 180 Days	Negotiations for Financial Assistance (If offers made)	195 Days

-----Agreement Reached: (1) Assistance-Continue Rail Service
(2) Purchase-Final Certificate

-----Agreement Not Reached - ICC may:
(1) Issue Final Certificate
(2) Reopen Proceedings
(3) Direct Operations for 1 Year
(4) Take any appropriate action

Prepared By:
Division of Railroads
Missouri Department of Transportation

January 10, 1978

Listing of System Diagram Lines in Missouri

CATEGORY I

BN	20.1 miles	Albany Junction, Mo. - Grant City, Mo.
BN	16.0 miles	Creston, Ia. - Maryville, Mo.
BN	90.4 miles	St. Joseph, Mo. - Humeston, Ia.
BN	17.1 miles	Birmingham, Mo. - Kearney, Mo.
BN	53.4 miles	Laclede, Mo. - Unionville, Mo.
BN	64.1 miles	Old Monroe, Mo. - Francis, Mo.
BN	74.0 miles	Alexandria, Mo. - Centerville, Ia.
BN	67.4 miles	West Quincy, Mo. - Kirksville, Mo.
CMSP&P	92.5 miles	Polo, Mo. - Iowa border
		Bankruptcy declared Dec. 19, 1977
MoPAC	3.4 miles	Cape Girardeau industry switching tracks
Frisco	7.5 miles	Kissick, Mo. - Ozark, Mo.
Frisco	12.0 miles	Kennett, Mo. - Holcomb, Mo.
SSW	31.7 miles	Lilbourne, Mo. - Wyatt, Mo.
SSW	21.4 miles	Paragould, Ark. - Blytheville, Ark.
SSW	28.8 miles	Hornersville Jct., Mo. - Caruthersville, Mo.
KCS	2.0 miles	Independence, Mo. - Sugar Creek, Mo.
KCS	3.3 miles	KOG Junction, Mo. - Baxter Springs, Ks.

CATEGORY III

Santa Fe	59.7 miles	Richmond, Mo. - B.C. Junction, Mo.
		Abandonment approved 7-14-77
BN	14.2 miles	Maryville, Mo. - Barnard, Mo.
		Conditional approval 10-12-77
MKT	8.8 miles	McBaine, Mo. - Columbia, Mo.
		Abandonment approved 10-7-77
MKT	11.0 miles	Franklin, Mo. - Fayette, Mo.
		Application Filed 12-15-77
Frisco	37.9 miles	Willow Springs, Mo. - Winona, Mo.
		Application to be Filed 1-30-78
Frisco	3.4 miles	Brooks Jct., Mo. - Vanduser, Mo.
		Application to be Filed 1-30-78
Frisco	101.0 miles	East Lynne, Mo. - Bolivar, Mo.
		Application Filed 9-26-77

Draft Philosophical Framework
Division of Railroads
Missouri Department of Transportation

Missouri plays an essential role in the overall rail transportation system of the United States due to its high ranking as both an agricultural and an industrial state. As a central state in the Midwest, with a significant rail system, Missouri is vitally concerned with problems affecting the rail industry today. The State of Missouri is served by 17 Class I railroads (those with over \$50,000,000 of revenue per year), 5 of which serve large metropolitan areas solely, while the remaining 12 crisscross the state. These railroads operate on over 6,000 miles of track within Missouri, employ over 16,000 Missourians, pay over \$278,000,000 a year in wages, and contribute over \$15,000,000 annually in state and local taxes. Yet these railroads, as with those elsewhere in the nation, are beset with a multitude of problems that could radically alter the structure of the present rail industry.

Both the problems and the benefits affecting the rail industry are vividly expressed within the borders of this state. The actions taken by Missouri, as set forth by this philosophical framework, may set precedents that could be followed by other states in solving their own rail problems. Our philosophical framework being one of both planning and implementation is designed to keep the railroads as a viable component of our free enterprise system.

The mission and overlying objective of the Missouri Department of Transportation (MoDOT) is to utilize the resources entrusted to it, or influenced by MoDOT to plan, promote, and develop a balanced multi-modal transportation system. Such a system will be coordinated with other state programs for economic and social development, energy conservation, and environmental protection to ensure its responsiveness to their needs. The departmental rail policy calls for the improvement of rail services throughout Missouri to guarantee that they remain as a vital component of a coordinated, multi-modal transportation system.

To translate this mission into meaningful activity, MoDOT has developed the following goals: (i) the economic development of the state by ensuring an adequate and well-balanced transportation infrastructure; (ii) the maximization of transportation benefits at the least possible social and economic costs; (iii) the provision of a broad framework within which local, metropolitan, and regional transportation planning and implementation can be related; (iv) implementation of national transportation policies as they are related to the needs of Missouri; (v) the establishment of an equitable tax structure for railroads that would eliminate the inequities imposed upon them compared to that affecting the other modes; (vi) the development of a strong working relationship with Missouri's railroads; and (vii) a public indoctrination and education program on the changing rail industry in Missouri. With goals such as these, the State of Missouri has taken several concrete steps in laying the necessary groundwork to achieve them. Both on a state level and in relationship with national transportation policies, Missouri has defined a philosophical framework to deal with prevalent and pervasive rail problems.

In June of 1975, the Missouri Transportation Commission adopted a rail policy statement in recognition of the critical problems in structural, regulatory, and managerial matters facing the railroads. The Commission recommended controlled, voluntary consolidation of individual lines into trans-continental rail companies, regulatory reforms of the Interstate Commerce Commission (ICC) including time constraints for required actions, abatement of property taxes on railroads, and fair competition among transportation modes through equitable taxation and subsidization. The first two recommendations have been addressed by the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), while the last two recommendations require further attention.

The 4R Act, which was an improvement in objectives and scope over the Regional Rail Reorganization Act (3R Act) of 1973, has several provisions relating to mergers, consolidation, and regulatory reform. Briefly, the act allows the U. S. Department of Transportation (USDOT) to develop and negotiate plans for mergers, establishes time limits on the ICC for merger decisions, and provides for an expedited merger procedure for consenting railroads. The 4R Act further establishes permanently both the Office of Rail Public Counsel and the Rail Services Planning Office, and requires the establishment of a uniform expense and revenue reporting system for rail carriers. These revised regulatory procedures are now being subjected to the test of practice with the filing for bankruptcy by the Milwaukee Road and the application for merger by the Burlington Northern and Frisco Railroads, as well as the other railroad problems presently facing us in the Midwest.

A word of caution must be interjected here and is necessary in light of the success of past mergers. Little if anything is gained if small, bankrupt railroads are merged into large, bankrupt railroads. A case in point being Conrail, where the government first merged several bankrupt railroad companies into the Penn Central and then merged it again into Conrail. It is only a matter of semantics whether Conrail is called a bankrupt railroad or a nationalized railroad.

Property taxes are a state issue and their abatement may provide a mechanism for the continuation of essential rail line operations. The tax burden imposed upon railroads is greater than that imposed upon the other various modes of transportation. Railroads not only maintain their rights-of-way over which they operate, but also pay property taxes on them, which is the opposite of other modes whose rights-of-way are publicly owned and therefore removed from property taxation. This situation offers Missouri an opportunity to financially assist railroads through appropriate tax relief.

Fair competition among modes through equitable taxation and subsidization is a national issue. Subsidies should be granted on the basis of public need with the ultimate goal being that of maintaining competition among the various modes within areas where it is needed. Again, a word of caution is necessary here in that it has all too often been the federal solution to pump massive infusions of public funds into a problem that has already reached its own solution. The weak railroads and non-essential services will automatically disappear as a result of current procedures leaving strong railroads and essential services operating within our free enterprise system. The proper role of government is to allow present procedures to seek proper solutions, while keeping a close watch on them and being prepared to provide assistance as a temporary means to meet specific transportation needs.

Also in 1975, in anticipation of the 4R Act, MoDOT initiated and secured passage of the State Rail Preservation Act (Chap. 680 RSMo 1976) which enables MoDOT to respond to the Federal Rail Assistance Program. This act requires MoDOT to establish a state rail plan, to implement the plan, provide for the distribution of federal rail service preservation subsidies within the plan, and to provide assurances of both fiscal control and financial responsibility in the processing of federal funds. It authorizes MoDOT to supply financial assistance, as funds are appropriated, for the preservation of operations and maintenance of railroads as set forth in federal legislation. It further authorizes MoDOT to act as the agent in any rail service preservation program, to cooperate with other states for these purposes, and to enter into contracts for these purposes.

Criteria which will be used by the state to determine priorities on lines or services to receive these rail service continuation services includes: (i) economic viability, (ii) local and regional commitment, (iii) availability of alternate transportation facilities, (iv) various impacts (i.e. social, economic, environmental) of rail abandonment, (v) transitional needs, and (vi) upgrading and capital outlay requirements.

The State of Missouri must eliminate main line redundancy yet not jeopardize the capacity to move both commodities and passengers in the future. Unprofitable branch lines must be eliminated, yet essential services have to be retained. The state has to be able to ease the impacts of these losses but cannot establish perpetual public expenditures in the process. The preservation of intra- and intermodal competition, where possible and practicable, is a goal of this state but not at a public cost in excess of competitively induced savings.

Missouri has a difficult road before it, either allow the established procedures to continue working under careful scrutiny thereby keeping our railroads within the private sector; or allow the government to subsidize the existence of the rail industry with public money resulting ultimately in the nationalization of the railroad industry. Now is the time for the railroads, the government, and the public to support policies and concepts that would avoid the nationalization of our railroads. This will require difficult decisions, vigilant observation, as well as many short-term, localized hardships in order to prevent both long-term drains on our tax dollars and the destruction through nationalization of a viable component of this country's free enterprise system.

Missouri Rail Facts

The State of Missouri plays an essential role in the overall rail transportation system of the United States due to its high ranking as both an agricultural and an industrial state. Out of a national total of 199,411 miles of track, Missouri ranks 10th with over 6000 miles of track within its borders, 3 percent of the national total. More specifically, Missouri's importance in the rail industry is directly linked to the functions of St. Louis and Kansas City, the second and third largest railroad terminals in the United States. For example, at St. Louis, upwards of 500,000 freight cars are outbound and 700,000 are inbound in an average year with an additional 1,300,000 cars passing through the area.

Seventeen Class I railroads (those with over \$50,000,000 of revenue per year) operate in Missouri, however, 5 of these serve large metropolitan areas solely. The remaining 12 are statewide and employ over 16,000 people in Missouri (3.4 percent of total railroad employment); the annual income of these employees exceeds \$278,000,000. In addition, these 12 railroads accounted for 165,712,991 total tons of revenue freight through Missouri in 1975. The valuation of property of those railroads serving Missouri, as assessed by the State Tax Commission, amounted to \$227,090,149 as of January 1, 1976. Furthermore, for 1976, the rail industry paid \$15,079,000 in either property taxes or other forms of taxes assessed in lieu of property taxes to the State of Missouri and local governments.

Passenger service is provided by Amtrak operating over 600 miles of track within the State (199 miles owned by Sante Fe and 461 miles owned by Missouri Pacific) and carrying over 37,800 departing and arriving passengers in Missouri annually. Service is presently available from Chicago to Los Angeles through Kansas City, Chicago to Laredo through St. Louis and Poplar Bluff, and from New York/Washington to Los Angeles through St. Louis, Jefferson City, and Kansas City, plus other destinations through connecting service.

But, as with the rest of the nation, railroads in Missouri are experiencing increasing difficulties in remaining competitive with other modes of transportation. Declining traffic and revenues have led to the deterioration of track and right of way (estimated at over \$100,000,000 in upgrading and capital outlay totals in Missouri alone), and the abandonment of unprofitable rail lines. Out of a total 20,102 miles of track up for abandonment, Missouri ranks 7th in the nation with a total of 841 miles of track (14 percent of total state mileage and 4 percent of national total) listed on ICC system diagram maps for possible abandonment. Of this total, 227 miles (7 rail segments) are already before the ICC in abandonment proceedings; the remaining 617 miles (17 segments) are candidates for possible abandonment within the next 3 years. In addition to this, a further 821 miles (23 route segments) or 13.7 percent of the state total have strong possibilities of becoming candidates for abandonment. Therefore, within the next few years, a total of 1665 miles (27.7 percent of the total) of track could be abandoned in Missouri.

Other facets of the ever-changing rail situation in Missouri include the following: (i) the possibility of Amtrak eliminating passenger service to the state; (ii) the filing of bankruptcy by the Milwaukee Road, which operates over 136 miles of track in Missouri, on December 19, 1977; and (iii) the possibility of numerous mergers of railroads which include many lines currently servicing Missouri. One of these, the merger of the Frisco into the Burlington Northern (BN), is currently before the Interstate Commerce Commission (ICC) for approval. If this merger is approved, the BN would operate over 2332 miles of track in this state (38.8 percent of state total) with annual benefits amounting to \$32,500,000 by the third year of consolidated operation. But this merger would also result in the loss of over 400 jobs statewide with an annual payroll loss of \$5,712,109 in Springfield alone.

Both the problems and the benefits affecting the rail industry today are expressed vividly within the borders of Missouri. The action taken by this state in regard to this valuable mode of transportation may set precedents that other states could emulate to solve their own rail situation. The State of Missouri should not let this opportunity pass.